

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Sacramento, California)

McGeorge School of Law

Employer

and

McGeorge Officer's Association

Petitioner

20-RC-18062**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 1/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 2/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c)(1) and Section 2(6) and (7) of the Act. 3/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time security officers employed by the Employer at its Sacramento, California facility; excluding all other employees and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **McGeorge Officer's Association**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before **January 4, 2006**. **No** extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **January 11, 2006**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

Dated December 28, 2005

at San Francisco, California

/s/ Joseph P. Norelli
Regional Director, Region 20

- 1/ The parties stipulated, and I find, that the Employer, which has a facility located in Sacramento, California, is a university engaged in the business of providing higher learning and education. The parties further stipulated, and I find, that during the most recent 12-month period ending in 2004, the Employer in conducting its business, derived gross revenues in excess of \$1 million. During the same time period, the Employer purchased and received at its Sacramento, California facility, products, goods and materials valued in excess of \$5,000 directly from points outside the State of California. Based on the parties' stipulation to such facts, and the record evidence, I find that it will effectuate the policies of the Act to assert jurisdiction in this matter.
- 2/ The only issue raised in this proceeding is the Employer's contention that the Petitioner is not a labor organization within the meaning of Section 2(5) of the Act. For the reasons discussed below, I decline to dismiss the petition on this basis and find that the Petitioner is a labor organization under the Act.

Petitioner President Reynaldo Dominguez testified that he is a retired police officer who has been employed by the Employer as a security officer for the past ten months. According to Dominguez, there are about seven other full-time security officers and one part-time security officer employed by the Employer. The job of these security officers is to ensure the safety of students, staff and visitors to the campus and to guard campus buildings. The security officers are overseen by the director of public safety. They carry weapons and have authority to arrest suspects on the campus pursuant to an agreement with the Sacramento Police Department.

Dominguez testified that the Petitioner was formed in October 2005. The record contains a draft of Petitioner's by-laws, which is incomplete, and which Dominguez described as "a work in progress." According to Dominguez, the by-laws are the only written document governing Petitioner and they will be submitted to the membership for final approval when they are completed.

The draft of the by-laws includes articles showing that the Petitioner admits full-time security officers of the Employer to active membership and on call or part time security officers of the Employer to limited membership. Active members are entitled to vote and have a voice in the Petitioner, while part time and on call security officers do not. The by-laws also provide that: "Any members [may] be terminated with 2/3 vote of the active members present." They also set forth Petitioner's officers (i.e., president, vice president, treasurer and secretary) and their duties. The by-laws provide for the election of officers annually in October and the holding of regular monthly meetings. At the time of the hearing, employees had selected a president, vice president, treasurer and secretary.

The draft of the by-laws states that one of the objectives of the Petitioner is to: “create an environment in which University and public safety officers work and interact towards achieving common goals and objectives.” Dominguez testified that the “common goals and objectives” refers to wages and other working conditions of security officers. According to Dominguez, the only purpose of the Petitioner is to “negotiate our wages and our working conditions and grievance policies,” and that this purpose has been communicated to the other security officers employed by the Employer.

Dominguez testified that the Petitioner has no plan to represent any individuals other than the security officers employed by the Employer and has no current plan to merge with any other labor organization. However, Dominguez testified that he has contacted the “UOP” about affiliating with that organization. The record does not disclose any further evidence about UOP.

At the time of the hearing, Petitioner’s office was at Dominguez’s home; a separate bank account had been established and employees were paying dues to the Petitioner.

Finally, Dominguez testified that the Petitioner does not intend to represent a non-dues paying member in grievance matters, stating that “it is just basic common sense. If he is not part of the Petitioner, why would we use our resources to help an individual that is not part of our Petitioner.” Dominguez testified that this proposition is not currently set forth in the draft of the by-laws and he did not know whether it would be included, stating only that it was a “possibility.”

Analysis. As indicated above, the only issue is whether the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Section 2(5) of the Act states:

The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Under this definition, a newly formed organization, which is not yet representing employees, may be accorded Section 2(5) status if it admits employees to membership and was formed for the purpose of representing them. *Early California Industries*, 195 NLRB 671, 674 (1972); *East Dayton Tool & Die Co.*, 194 NLRB 266 (1971); *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970); *Butler Mfg. Co.*, 167 NLRB 308 (1967). Even if such a

labor organization becomes inactive without ever having represented employees, it is deemed to have been a statutory labor organization if its organizational attempts "[c]learly ... envisaged participation by employees," and if it existed "for the statutory purposes although they never came to fruition." *Comet Rice Mills*, 195 NLRB 671, 674 (1972); *McClain E-Z Pack, Inc.*, 342 NLRB No. 27 (June 30, 2004); *Coinmach Laundry Corp.*, 337 NLRB 1286 (2002); *East Dayton Tool & Die Co.*, *supra*. Moreover, "structural formalities are not prerequisites to labor organization status." *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution, bylaws, meetings or filings with the Department of Labor); *Betances Health Unit*, 283 NLRB 369, 375 (1987) (no formal structure and no documents filed with the Department of Labor); *East Dayton Tool & Die Co.*, *supra* (no constitution or officers), 94 NLRB 266 (1971); *Comet Rice Mills*, *supra*. (no filings with Department of Labor). Furthermore, the fact that an organization may be considering affiliating with another labor organization in the future does not disqualify it as a labor organization under Section 2(5) of the Act. *Butler Manufacturing Co.*, *supra*. Consideration of such a possibility at this juncture would be premature and speculative. If such an affiliation occurs, the Board has authority to police its certification and procedures exist to test the propriety of an affiliation if it were to take place. *Id.* Nor is there any evidence in this case that Petitioner is affiliated with or dependent upon any non-guard labor organization or admits or intends to admit any non-guards to its membership. *Wackenhut Corp.*, 223 NLRB 83, 85 (1976); *Wackenhut Corp.*, 169 NLRB 398 (1968).

While Petitioner President Dominguez testified that the Petitioner does not intend to represent non-member unit employees in grievance proceedings, I do not find that such testimony warrants a finding that Petitioner lacks Section 2(5) status under the circumstances of this case. Thus, it is plain from the record that Dominguez is unfamiliar with labor relations laws and procedures and that his testimony in this regard is a result of his lack of knowledge and experience. Indeed, Dominguez testified that "we are going to have to start looking for legal counsel because obviously I don't have all the answers." Further, I note that the draft of the by-laws does not contain any statement that the Petitioner will refuse to represent any unit employee. Finally, I note that, as Dominguez testified, the by-laws are only a work in progress and are subject to the approval of the membership prior to formal adoption by the Petitioner. Noting Dominguez' unfamiliarity with labor relations law and the terminology associated therewith, it is not unlikely that the "basic common sense" concept that Dominguez is contemplating is a lawful, contractual union-security arrangement whereby all represented employees must become "members" of Petitioner either by joining or meeting the financial obligations of membership. In my view, it would be premature and speculative to assume that Petitioner, if selected and certified as the bargaining representative, would fail to satisfy the statutory duties of a labor organization. Likewise, despite the fact that the Petitioner's draft bylaws presently provide

for active membership only for full-time security officers, I decline to find, on that basis, that Petitioner, if selected and certified as the bargaining representative, would deny representation to regular part-time security officers who are within the unit found to be an appropriate unit in this case.

In sum, for the foregoing reasons, I reject the arguments raised by the Employer and I find that the Petitioner is a labor organization under Section 2(5) of the Act. Accordingly, I refuse to dismiss the petition based on Petitioner's alleged lack of labor organization status.

- 3/ The parties stipulated, and I find, that there is no contract bar to this proceeding.
- 4/ I find that the unit stipulated to by the parties, with certain modifications, is an appropriate unit for collective bargaining purposes.